

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA, Plaintiff, vs. SOLOMON ANTHONY GARDNER, Defendant.	CR 21-50-BLG-SPW ORDER
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This matter comes before the Court on the United States' motion to vacate the final order of forfeiture (Doc. 37). Having reviewed the motion, and for good cause shown, the Court FINDS:

1. The United States commenced this action pursuant to 18 U.S.C. § 924(d);
2. A preliminary order of forfeiture was entered on December 9, 2021 (Doc. 25) and a final order of forfeiture was entered on May 26, 2022 (Doc. 35), thereby entering judgment of forfeiture of the following property in favor of the

United States, pursuant to 18 U.S.C. § 924(d), free from the claims of any other party:

- a Smith & Wesson SD9VE pistol CAL: 9 SN: HFP2158; and
- 15 rounds of assorted 9mm ammunition;

3. On October 31, 2022, the United States received a request for the two assets from the Butte-Silver Bow County Attorney's Office requesting the firearm and ammunition are "necessary as part of our ongoing prosecution of a criminal matter, State of Montana v. Solomon Gardner." (Ex. 1, Letter from Butte-Silver Bow County). The letter further states that Butte-Silver Bow County will take possession of the firearm and ammunition and will assume responsibility for the items. Butte-Silver Bow County further acknowledged that vacating the final order of forfeiture voids the forfeiture in its entirety and that Butte-Silver Bow will take full responsibility for any eventual destruction and/or return of the items. (Ex. 1.)

It is therefore ORDERED that the United States' Motion to Vacate Final Order of Forfeiture (Doc. 37) is **GRANTED**.


FURTHER,

1. The final order of forfeiture in this matter (Doc. 35) is **VACATED**.
2. The following assets shall be transferred to Butte-Silver Bow County as soon as practical:

- a Smith & Wesson SD9VE pistol CAL: 9 SN: HFP2158; and
- 15 rounds of assorted 9mm ammunition.

3. The United States shall have no legal title to the firearm or ammunition. Butte-Silver Bow County assumes all responsibility for the firearm and ammunition.

DATED this 4th day of November, 2022.



SUSAN P. WATTERS
United States District Judge



THE CITY-COUNTY OF Butte-Silver Bow

COUNTY ATTORNEY'S OFFICE
EILEEN JOYCE, COUNTY ATTORNEY
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October 31, 2022

Philip Swain, Special Agent
Bureau of ATF
2929 Third Avenue North, Suite 258
Billings, MT 59101

RE: Gardner Evidence

Dear Special Agent Swain:

This letter is to inform you that Butte Silver Bow Law Enforcement Department wishes to retain the evidence you have obtained with respect to Solomon Gardner. This evidence is necessary as part of our ongoing prosecution of a criminal matter, State of Montana v. Solomon Gardner, which is currently in warrant status. Butte Silver Bow Law Enforcement Department is willing and able to take possession of the firearm and ammunition. Butte Silver Bow understands that we will be responsible for this evidence, and that the Order setting aside forfeiture voids the forfeiture, and Butte Silver Bow Law Enforcement Department will take responsibility for its eventual destruction and/or return pursuant to law. Sgt. Josh Stearns is the primary point of contact for this evidence, and he can be reached at 406-490-2957 or jstearns@bsb.mt.gov.

Thank you for your assistance in this matter. Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelli Fivey".

KELLI FIVEY
DEPUTY COUNTY ATTORNEY